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DISPATCHED BY

Federal Communications Commission

DA 99-1112

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	CC Docket No. 94-129
Telecommunications Act of 1996)	
)	
Sprint Communications Company, L.P.)	
Request for Waiver)	
)	

ORDER

Adopted: June 17, 1999

Released: June 17, 1999

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,¹ the Commission adopted rules² applicable to carriers changing a consumer's preferred carrier. In this order we grant Sprint Communications Company, L.P. ("Sprint") a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders* to enable Sprint to transfer the subscribers of Telmex³/Sprint Communications, L.L.C. ("TSC") to Sprint.

¹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993) (*PIC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*).

² 47 C.F.R. §§ 64.1100 - 64.1190.

³ Telefonos de Mexico, S.A. de C.V.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe."⁴ The goal of section 258 is to eliminate the practice of "slamming," which is the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.⁵ In the recently issued *Section 258 Order*, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers.⁶

3. Sprint requests a waiver of our verification rules to allow it to transfer TSC's subscribers to Sprint's customer base without first obtaining each subscriber's authorization and verification.⁷ Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant Sprint's petition subject to the conditions represented in its filing.

II. DISCUSSION

4. Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.⁸ We find that Sprint has made a showing of good cause to grant a waiver of the requirements in the Commission's carrier change rules and orders for those consumers who have authorized TSC as their preferred carrier. Sprint has demonstrated that special circumstances exist that would warrant a waiver. In its Amended Waiver Petition, Sprint explains that TSC is a 50-50 joint venture between Telmex and Sprint that was established to provide domestic and international long distance services to U.S.

⁴ 47 U.S.C. § 258.

⁵ The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order* at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

⁶ Pursuant to these new procedures, carriers must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1150.

⁷ On May 21, 1999, Sprint filed a Petition for Waiver. On May 28, 1999, Sprint filed an Amended Petition for Waiver (Amended Waiver Petition).

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

residents.⁹ On May 4, 1999, however, Telmex and Sprint announced that they were dissolving the joint venture. Under the terms of the dissolution, TSC's subscribers will begin receiving services directly from Sprint, as opposed to receiving Sprint service through TSC. Sprint states that it will send letters to TSC's subscribers informing them that TSC has discontinued service, that the service they have received from TSC has always been physically provided by Sprint, and that if they stay with Sprint, they will continue to receive the same service as provided by TSC at the same rates, terms and conditions. The notifications will also inform TSC's subscribers that they can contact their local exchange carrier ("LEC") to change carriers. In addition, after the transition, Sprint will send welcoming letters to those customers who decide to remain with Sprint and will handle all customer complaints filed against TSC.¹⁰

5. We also conclude that Sprint has shown that granting its request is in the public interest. Without this waiver, TSC's customers are at risk of either temporarily losing their long distance service or of being charged substantially higher rates than those they received from TSC.¹¹ Furthermore, Sprint has agreed that if the Commission waives its rules to permit Sprint to provide service to TSC's customers, Sprint will respond to and handle any customer complaints filed against TSC.¹² In addition, Sprint will implement a multi-step notification plan that will inform TSC's subscribers of the assumption of their service by Sprint and that they will continue to be billed at the same rates, terms and conditions.¹³ Sprint's notice will also advise consumers that they have the right to change their preferred carrier at any time. We conclude that these conditions will adequately protect the rights of TSC's customers.

III. CONCLUSION AND ORDERING CLAUSES

6. For the foregoing reasons, we grant Sprint's waiver request for the limited purposes described above. The grant of this waiver is conditioned upon Sprint's provision of the customer notification and handling of complaints described above and further detailed in its petition.

7. Accordingly, pursuant to authority contained in Sections 1, 4, and 258, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the waiver request filed by Sprint Communications Company, L.L.C. on May 21, 1999, and amended on May 28, 1999, IS GRANTED to the extent indicated herein.

⁹ Sprint is TSC's underlying facilities-based carrier. Amended Waiver Petition at 2.

¹⁰ *Id.*; Letter from Michael B. Fingerhut, Sprint, to Anita Cheng, FCC, dated June 3, 1999 (Sprint Letter).

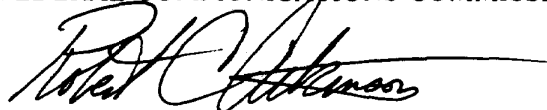
¹¹ Amended Waiver Petition at 3-4.

¹² Sprint Letter.

¹³ Amended Waiver Petition at 2.

8. IT IS FURTHER ORDERED that this Order is effective upon the dissolution of Telmex/Sprint Communications, L.L.C.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Robert C. Atkinson", is written over a horizontal line.

Robert C. Atkinson
Deputy Chief, Common Carrier Bureau